

Legal Issues in E-Commerce

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ABSTRACT

In India Electronic commerce (e-commerce) business is flourishing at a great speed and offers exceptional opportunities for the economic development of India, with its huge pool of technology skilled, educated manpower. However the growth of e-commerce will depend on the advancement of a consistent legal and regulatory framework able to cope with ensuring rights and obligations in a virtual environment. Many technological, legal and regulatory challenges have the limited growth of electronic commerce in India.

Although we do not have a dedicated e-commerce law in our country, the Information Technology Act 2000 (IT Act 2000) is the only cyber law of India, which is regulating e-commerce business and transactions in India. Besides developing the e-infrastructure in the country through effective Telecom Policy measures, the Indian Government is taking appropriate steps as confidence building measures for the growth of e-commerce. It has created the necessary legal and administrative framework through the enactment of Information Technology Act 2000. This paper aims to :-

- **To identify the legal issues in the ecommerce industry.**
- **To study the existing laws & industry regulations that governs e-commerce.**
- **To understand the effectiveness of ecommerce laws in our country.**
- **Introduction to Types of Legal Issues in E-commerce Industry.**

Key Words: E-Commerce, Legal, I.T. Act 2000, Consumer Protection Act- 1986

INTRODUCTION

E-commerce can simply be defined as conducting business on-line. E-commerce is the buying and selling of products and services by businesses and consumers over the Internet. Internet sales are increasing rapidly as consumers take advantage of lower prices offer by wholesalers retailing their products. This trend is set to strengthen as web sites address consumer security and privacy concerns. Since last decade the popularity of e-commerce is tremendously increased due to quick and convenient way of exchanging goods and services both regionally and globally. Now-a-days it has become the virtual main street of the world. Today, e-commerce has grown into a huge industry. India's e-commerce market was worth about \$3.8 billion in 2009, it went up to \$12.6 billion in 2013. In 2013, the e-retail segment was worth US\$ 2.3 billion. About 70% of India's e-commerce market is travel related. According to Google India, there were 35 million online shoppers in India in 2014 Q1 and is expected to cross 100 million mark by end of year 2016. Electronics and Apparel are the biggest categories in terms of sales.

EXISTING REGULATIONS ON E-COMMERCE IN THE COUNTRY

➤ **Information Technology Act, 2000 (I.T. ACT)**

The Information Technology Act, 2001, makes India only 12th country in the world to have such a comprehensive legislation for e-commerce. This Act has led to amendments in the Indian Penal Code, the Indian Evidence Act, 1872, and the RBI Act, 1934 to make them align with the requirements of digital transactions. The IT Act essentially seeks to address three areas or requirements for the digital era:

- (1) To make e-commerce transactions possible- Both business to business and business to consumer.
- (2) To make e-governance transactions possible- Both Government to citizen and citizen to Government.
- (3) To prevent cybercrimes and regulation of the Internet.

I.T. Act provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of

alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies.

➤ **Consumer Protection Act 1986.**

In view of the new models of business in e-commerce, it is important to keep in mind consumer protection issues. In India the Consumer Protection Act 1986 (“CPA”) governs the relationship between consumers and service/goods providers. There is no separate consumer protection law that is specific to and regulates online transactions. Liability under the CPA arises when there is “deficiency in service” or “defect in goods” or occurrence of “unfair trade practice”. The CPA specifically excludes from its ambit the rendering of any service that is free of charge.

- If an online platform is not charging the users, the CPA may not apply.
- If actual sales are taking place on the online platform, the users will be considered ‘consumers’ under the CPA and its provision will apply to the sale of products by the online platform. Depending upon who is actually selling the goods or rendering services the liability may trigger. The distributor of goods also comes within the purview of the CPA. There is a special adjudicating forum (with appellate forums) which is constituted under the CPA. Some of the various sanctions which may be imposed under the CPA are as below: Removal of defects / deficiencies;
- - Replacement of goods;
 - Return of price paid;
 - Pay compensation as may be awarded;
 - discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

It provides for regulation of trade practices, creation of national and state level Consumer Protection Councils, consumer disputes redressal forums at the National, State and District level to redress disputes, class actions and for recognized consumer associations to act on behalf of the consumers. The Act provides a detailed list of unfair trade practices, but it is not exhaustive.

➤ **Other Legal Compliances**

The legal requirements for undertaking e-commerce in India also involve compliance with other laws like Contract Law, Indian Penal Code, etc. Further, online shopping in India also involves compliance with the financial norms applicable in India. For instance, If any e-commerce concern has to allow online payments receipt and disbursements for its existing or proposed e-commerce activities, it has to take a license from Reserve Bank of India (RBI) in this regard

LEGAL VALIDITY OF ELECTRONIC TRANSACTIONS

Formation Of An E-Contract

Some of the most common forms of e-contracts are click wrap, browse wrap and shrink-wrap contracts. In each of these contracts, the terms and conditions of the contract are made available to the contracting party in a form that is significantly different from the usual paper contracts. In case of a click wrap contract, the contracting party’s affirmative acceptance is taken by means of checking on an ‘I accept’ tab. Also, there is typically a scroll box that allows the contracting party to view the terms and conditions.

Legal Validity Of Electronic Transactions

A browse wrap agreement is intended to be binding on the contracting party by the mere use (or browse) of the website. Shrink wrap agreements though not directly relevant to e-commerce platforms are relevant in the context of e-commerce mostly because of the kind of goods associated with shrink-wrap agreements. In case of a shrink-wrap agreement the contracting party can read the terms and conditions only after opening the box within which the product (commonly a license) is packed. Validity of Online Contracts Existence of a valid contract forms the crux of any transaction including an e-commerce transaction. In India, e-contracts like all other contracts are governed by the basic principles governing contracts in India, i.e. the Indian Contract Act, 1872 (“Indian Contract Act”) which inter alia mandate certain pre-requisites for a valid contract such as free consent and lawful

Overview Of The Indian Laws And E-Commerce Business.

The objectives of the Information Technology Act, as outlined in the preamble, are to provide legal recognition for E-commerce transactions, facilitate Electronic Governance and to amend the Indian Penal Code, Indian Evidence Act 1872, the Bankers’ Book Evidence Act 1891 and the Reserve Bank of India Act 1934. The Act also establishes a regulatory framework for cyber laws and lays down punishment regimes for different cyber crimes and offences.

Law Enforcement And Policing

Enacting a law is one thing, and effective enforcement is something totally different. The Government should exercise particular care while enforcing the Information Technology Act and special regard must be given to its technical nature. Failure to do so will produce undesirable results. There are some provisions in the Act that give wide powers to the police to check cyber crimes. They even given the power to arrest without a warrant in some cases. A basic understanding of the technical aspects will help prevent abuse of this power, which is mainly due to ignorance. Furthermore, giving a definition of ‘hacking’ in the Act itself was unnecessary. Technology wizards say that what is described as ‘hacking’ in the Act is, in fact ‘cracking’ and not hacking. Even without plunging deep into technical details, this does prompt one to think that it is sometimes better to keep the enacting statute simple and leave detailed provisions to secondary or administrative legislation in the forms of rules or regulations.

Role Of Business/Industry Associations In Promoting Legal Awareness And Protecting From Exploitation

Security of the consumer has been a major concern in the e-commerce segment. This security aspect is not only limited to the financial transactions but is extended to unforeseen divulging of information such as email address, personal contact details etc. There are other data that a host vendor website could collect passively such as the routine/pattern of the consumer buying. This typically leads to sending bulk SMS, direct calling to consumer & theft on financial details. The role of organizations & various industries is very critical at this juncture to ensure that law is enforced properly. There are various regulations, awareness programs run by various industry associations such as FIICI, ASSOCHAM, Industry retailers associations etc. The Government has also established specific institutions for tackling the issues related to e-commerce transactions.

CONCLUSION

The Information Technology Act is a commendable piece of legislation for India and is a bold step in the right direction, but there are many more substantive areas that need to be addressed—for example, spamming laws, consumer protection, intellectual property rights, negotiable instruments, data protection rights and privacy rights. At present there are several stumbling blocks in the development of e-commerce such as computer initial investment, technological issues, computer ill-literacy, legal hassles, and adverse mindset of consumers, privacy and security issues. It may be wise to have separate legislation for some of the above rather than complicating the Information Technology Act with numerous things. Similarly, though the provision relating to electronic signatures suited the country’s prevailing circumstances and available technology at the time of the legislation, it should be amended in due course in order to accommodate changing technological advances. Enacting legislation in order to facilitate E-commerce transactions is merely a first step. Effective implementation and strategic exploitation of its potential is a much more arduous task and should be done with care and caution. Also, greater attention should be given to promoting electronic governance. The Information Technology Act of India is a laudable work of the Government and it is to be hoped that it will be an inspiration for other developing countries to legislate E-commerce laws as envisaged by the United Nations Resolution on the UNCITRAL Model law. Moreover, these countries will have the advantage of observing and learning from India’s experience and taking measures to address some more issues at the enactment stage itself.

However, these barriers to e-commerce can be taken care of in due course and hence e-commerce has bright prospects in India. We need to update ourselves to greet e-commerce and reap its benefits.

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